U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 January 2005

Case No.: 2003-LHC-1529

OWCP No. 07-137531

IN THE MATTER OF

MATTIE N. CAMPBELL,
Claimant

vs.

ADM/GROWMARK RIVER SYSTEM, INC.,
Employer

APPEARANCES:

ARTHUR J. BREWSTER, ESQ.,
n Behalf of the Claimant

JOSEPH J. LOWENTHAL, ESQ.,
n Behalf of the Employer

BEFORE: PATRICK M. ROSENOW
Administrative Law Judge

DECISION AND ORDER

PROCEDURAL STATUS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (the Act), 33 U.S.C. § 901 *et seq*., ("the Act") brought by Mattie Campbell (Claimant) against ADM/Growmark River System, Inc. (Employer). The case was referred to the undersigned Administrative Law Judge for hearing. Both parties were represented by counsel. On 10 Sep 04, a hearing was held at which the parties called witnesses, examined and cross examined those witnesses, offered exhibits, and made arguments. Post hearing briefs were submitted by both parties.

My decision is based upon the entire record which consists of the following[1]:

Witness Testimony of

Claimant
Ruth Sacra
Floyd Sutton

Exhibits[2]

Joint Exhibit (JX) 1
Claimant's Exhibits (CX) 1-6
Employer Exhibits (RX) 1-21

FACTUAL FINDINGS

There is no significant disagreement as to the basic facts in this case.[3] Claimant is a 48 year old high school graduate. Her employment history includes work as a hotel maid, a sales clerk/stocker at a retail store, a day care worker, and a cashier/bus driver for Airport parking. She first worked at the grain elevator in Saint Charles in 1981. She was laid off for a period but began working there again in 1986.

On 15 Aug 95, she suffered an injury to her shoulder and neck while working on the bin deck, unloading rail cars and taking grain samples with 5 gallon buckets. She received medical treatment from a number of doctors. Her treatment eventually included shoulder decompression surgery on her right shoulder.[4] She is right-handed.

Claimant was returned back to work as a laborer in November of 1995. However, over time she became unable to do that job. Eventually, in October of 1996, employer offered claimant a chance to move to a position as a security guard. There was already one security guard, Mr. Sam Cartoza, who worked the day shift. Employer offered Claimant a position to work an evening shift, from 7:00 PM to 3:00 AM as a gate guard. Her duties were consistent with CX-3 and involved signing vehicles in and out of the main gate and walking around to check on general security. Before assigning Claimant to the position, Employer had not used an evening shift guard. The things Claimant did as night guard were previously either not done at all, or taken care of by other employees on an ad hoc basis. The position required no specific

[1] I have reviewed and considered all testimony and exhibits admitted into the record. Reviewing authorities should not infer from my specific citations to some portions of witness testimony and items of evidence that I did not consider those things not specifically mentioned or cited.

[2] I note that the list of Claimant Exhibits cited in Employer's Brief is inconsistent with what was actually offered and admitted into the record. I based this decision on the evidence actually admitted. Additionally, Employer offered post hearing a 2nd RX 19, the Deposition of Nancy Favaloro. RX 19 and 20 are the single page documents concerning job applications to Brinks and a casino. Employer's post hearing submission should have been marked as RX-21, and is accepted as such.

[3] The parties have stipulated as to fact of injury, jurisdiction, and coverage. (JX-1)

[4] The parties have stipulated that more than $75,000 in medical treatment has been provided to Claimant. (JX-1) Medical treatment is not an issue in this case.

training or certifications and there was no on the job training. Her pay was $8.34/hour with a 40 hour work week and some overtime. She started work in that job on 28 Oct 96.

After about a month, Mr. Cartoza went on vacation. Claimant was reassigned to cover his shift. She never retuned to the evening shift, since Mr. Cartoza decided to retire, and the change was made permanent. Employer never replaced Claimant on the evening guard shift.

Even though Employer operated around the clock, because of the nature of the business, there was more going on during the day. Consequently, the day guard was asked to more than just sign in trucks and check on general security. Claimant was required to do a wide variety of errands and administrative and logistical chores. They included writing weight tickets and calculating monies due for grain trucks coming in; filing for the safety office; picking up grain samples, payroll and mail and using a car or truck to drive them to other sites; preparing rooms for meetings; posting employee bulletins; answering the phone; checking fuel tickets. (Mr. Cartoza had performed the same functions.)

Generally, there were no other guards, so when she left to perform her various errands, there was no gate guard. Occasionally, other injured employees would be assigned temporary guard duty, but they would just sit there and not do any of the extra tasks assigned to Claimant. Claimant was working 50 hours/week. Claimant was physically able to do the jobs assigned to her. She never complained to Employer of any physical limitations. She was an effective employee and at one time asked for an increased salary based on the additional duties she was performing.

Claimant continued in that position until March 2002, when she underwent shoulder surgery. By the time she returned to work, the following October, employer had hired contract workers to act as guards. There was also a decrease in the additional duty work to be done, because voice mail had been installed and another employee had been designated to take care of the weight tickets. Claimant worked along side the contract guards. She did make airport runs, kept the rain sheet to track weather changes for contract purposes[5], helped clean out files, attached memos to time cards, and made sample and log deliveries. The contract guards did not do any of those additional chores. Her hours decreased to 40/week, in part to accommodate her physical condition.

The Homeland Security Act required Employer to change its method of hiring security guards. Consequently, on 30 Apr 04, Employer terminated Claimant's guard position. At that time she was earning $10.45/hour.

She still has some pain associated with movement and is restricted from lifting more than 10 pounds. She can drive, although turning her head frequently causes some pain and would make it difficult to operate a shuttle bus or van in heavy traffic with constant turns. She can perform household tasks such as grocery shopping, laundry, cleaning, making beds, sweeping, and cleaning. Physically, she can do security guard work.

[5] This was a task of some consequence since it determined what delays could be attributable to weather and could directly effect Employer's bottom line.

Between being laid off in April of 2004 and the hearing date in September 2004, Claimant applied for three jobs. They were security positions with Brinks and Treasure Chest Casino and as a school lunch monitor. She is currently unemployed.

STIPULATIONS[6]

The parties stipulate and the court finds as fact:

1. That Claimant was injured on 15 Aug 95 in the scope and course of her employment in maritime work as an employee of Employer.
2. That Claimant reached maximum medical improvement (MMI) on 8 Nov 95 and 16 Oct 02.
3. That the Average Weekly Wage (AWW) at the time of the injury was $696.90
4. That $77,958.25 in medical benefits were provided through 31 Aug 04.
5. That notice of the injury was given to Employer on 16 Aug 95.
6. That controversion was filed on 21 Aug 01.
7. That an informal conference was held on 27 Feb 03.

ISSUES SUBMITTED—POSITIONS OF THE PARTIES

Claimant submits that the guard position offered her was sheltered employment and since Employer has not established suitable alternative employment, she is entitled to permanent total disability benefits. In the alternative, Claimant submits that her current earning capacity as established by the guard position should be $5.13/hour rather than $8.34/hour. Finally, Claimant argues that even in the event that $8.34 is the correct figure, Employer miscalculated amounts due Claimant and underpaid her during five separate periods between November 1996 and September 2001.

Employer argues that the guard position was not sheltered employment, that the $8.34 is a reasonable reflection of Claimant's post injury earning capacity, and that she does not qualify for total disability. Employer has not responded to Claimant's miscalculation argument.

APPLICABLE LAW

In order to establish a *prima facie* case of total disability, the employee need only show he or she cannot return to his regular or usual employment due to his work-related injury.[7] If the claimant makes this *prima facie* showing, the burden shifts to employer to show suitable alternative employment.[8] An employer must show the existence of realistically available job opportunities within the geographical area where the employee resides which he is capable of performing, considering his age, education, work experience, and physical restrictions, and which he could secure if he diligently tried.[9]

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[6] JX-1

[7] Elliot v. C & P Tel. Co., 16 BRBS 89 (1984).

[8] Clophus v. Amoco Prod. Co., 21 BRBS 261 (1988); Nguyen v. Ebbtide Fabricators, 19 BRBS 142 (1986)

[9] Diamond M. Drilling Co. v. Marshall, 577 F.2d 1003, 8 BRBS 658 (5th Cir. 1978), aff'g Kilsby v. Diamond M. Drilling Co., 6 BRBS 114 (1977);

An employer can meet this burden by offering the claimant a job in its facility.[10] The job may be different than the original one and involve light duties which accommodate the employee's injury.[11] However, such a job must be a substantial one not designed for the primary benefit of the employee. An employer-provided job will not establish suitable alternative employment if it is a job for which the employee is paid even if he cannot do the work and which is unnecessary[12] or if the employee would not necessarily be replaced if his job were terminated and where he was treated with "kid gloves," implying that his work was of little benefit to his employer and his wages were not justified by his service.[13]

If the employer provided position is not "sheltered employment," it satisfies the requirement to show suitable alternative employment. Accordingly, total disability would not apply. In such cases, the Act is designed to compensate for the "incapacity because of injury to earn the wages which the employee was receiving at the time of injury."[14] The incapacity is the difference between the average weekly wage (AWW) and the post injury wage earning capacity.[15]

The Act states that

> [T]he wage-earning capacity of an injured employee … shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: Provided, however, that if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future. [16]

If a party contends that the actual earnings do not fairly represent the wage earning capacity, it bears the burden of persuasion on that issue.[17]

An employer is not a long-term guarantor of employment.[18] A person who has regular and continuous post-injury employment "must take chances on unemployment like anyone else."[19]

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[10] Darby v. Ingalls Shipbuilding, Inc., 99 F. 3d 685, 30 BRBS 93 (CRT) (5th Cir. 1996); Darden v. Newport News Shipbuilding , 18 BRBS 224 (1986)
[11] Walker v. Sun Shipbuilding, 19 BRBS 171 (1986)
[12] Harrod v. Newport News Shipbuilding & Dry Dock Co., 12 BRBS 10 (1980)
[13] Patterson v. Savannah Mach. & Shipyard, 15 BRBS 38 (1982)
[14] 33 USC § 902(10) (2001).
[15] 33 USC § 908 (2001)
[16] 33 USC §908(h)(2001)
[17] Burch v. Superior Oil, 15 BRBS 423 (1983); Gage v. J.M. Martinac Shipbuilding, 21 BRBS 66 (1988
[18] Edwards v. Todd Shipyards Corp., 25 BRBS 49 (1991)
[19] Devillier v. National Steel & Shipbuilding Co., 10 BRBS 649, 658 (1979); *but cf* Mendez v. National Steel & Shipbuilding Co., 21 BRBS 22 (1988) (employee given light duty for eight months before being laid off—held not to have satisfied suitable alternative employment burden)

EVIDENCE

Claimant testified that:

She is a single mother of two grown children. She is 48 years old and has a high school education. Her employment history over the years includes working as a maid in a hotel, as a sales clerk/stocker at a retail store, some day care, and a cashier/bus driver for APCO (airport parking). Her work as a maid and stocker included some lifting and reaching overhead.

She first started working at the grain elevator in Saint Charles in 1981. She was laid off for a while but started again in 1986. Her injury history includes an arm/wrist injury for which she received MD expenses and some compensation. She also had a knee injury.

In August of 1995 she was working on the bin deck, unloading rail cars and taking samples with 5 gallon buckets 50-100 yards to a lab. She noticed some pain but continued working and started shoveling on a conveyer belt. To do so, she had to twist in an awkward way and had to stop because of pain in her shoulder and neck.

She went to her superintendent and told him she was hurting and going home to put some ice on it and rest. She was subsequently treated by a number of doctors. Her treatment included decompression surgery on her right shoulder. She is right handed. The employer provided her with medical treatment and paid her disability benefits.

Eventually, she did return to work. However, she was unable to do her original job so employer offered her a job as a security guard. Her duties were consistent with CX-3 and involved signing vehicles in and out of the main gate and walking around to check on general security. The position required no specific training or certifications and there was no on the job training accomplished. Since there was an individual already working the day shift, she was assigned to the gate from 7 PM to 3 AM. Her pay was $8.34/hour with a 40 hour work week and some overtime.

After a month, when the day guard went on vacation, she was reassigned to work 6 AM to 4 PM, 5 days/week. Later, when the other guard retired, she replaced him and that shift change was made permanent. No one replaced her on the night shift.

She was working 50 hours/week and was being asked to do more additional duties in addition to guarding the gate. She was required to write weight tickets and calculate monies due for grain trucks coming in; do some filing for the safety office; and pick up grain samples, payroll and mail and use a car or truck to drive

them to another site across the river. She also prepared rooms for meetings, posted employee bulletins, answered the phone file, and checked fuel tickets. The elevator is a 24 hour operation and the need for her to do extra jobs would depend on business. The guard she replaced did the same type of errands when he was working. She never did extra duties while she was on the night shift.

There were no other security guards. When she left to run errands there would be no guard. At times, there were other injured employees who could not perform their regular duties. They were given part time security jobs and would basically just sit there. Eventually they all left. There were no other permanent employee security guards.

Eventually she had to undergo another surgery in March of 2002. Before she left for that treatment, she was working 50 hours/week. When she returned her doctor limited her to 40 hours/week. Upon her return, there was a decrease in the additional duty work to be done. There was voice mail installed, another employee had been designated to take care of the weight tickets, and employer hired contract workers to act as guards. She worked along side the contract guards. She also did make airport runs, kept the rain sheet to track weather changes for contract purposes, helped clean out files, attached memos to time cards, and made sample and log deliveries. The contract guards did not do any of those additional chores.

She continued to work in that position at 40 hours/week until she was let go by employer on 30 Apr 03. At that time her pay was $10.45/hour. She was not offered any other position nor was given any post-employment services or vacation rehabilitation.

She has looked for jobs since then, visiting the job service office in June. She has no computer skills or experience but used the computer to check for jobs. She applied for employment as a security guard at a casino and for Brinks, along with a position as a lunchroom monitor, but has not had any responses. Neither Brinks nor the casino indicated that certification was required, although Brinks requires the ability to lift 50 pounds. She has continued to check the computer and newspaper for jobs. She last actively sought employment in August.

She continues to be followed by her doctor and is currently taking Vicodin and Flexeril. Her condition has significantly changed in the last year. She is restricted form lifting more than 10 pounds over her head or reaching. While she has some pain associated with movement, she has learned how to accommodate and could do those things required of a security guard. While she can drive some and has no restriction on her license, it is painful to turn her neck frequently, so driving a shuttle bus is not a good option. She is able to perform household tasks such as grocery shopping, laundry, cleaning, making beds, sweeping, and cleaning. Physically, she can do security guard work.

Before she was laid off, she never went to the employer and complained that she couldn't physically perform any part of her job. She has neither met nor talked to Nancy Favaloro.

Ruth Sacra testified that:

She has worked as an administrative assistant for employer for more than 20 years. She is the office manager and oversees everything from grain inventory to workmen's compensation. In 1995 Crawford was the compensation administrator for the elevator.

She was at the meeting when Claimant was offered the security guard job. CX-3 shows the job. It was sent to the adjuster to make sure Claimant could do the job. It lists the duties but is not exhaustive, because the specific tasks were too numerous and varied to mention. Besides, the adjuster didn't need to see everything.

Prior to offering Claimant the evening guard job, Employer had only one guard, "Sam". He was working as a guard when we purchased the elevator and had been a foreman at another site. Sam did some additional duties but not as many as Claimant ended up doing. The tasks Employer eventually had Claimant do were necessary and someone had to do them. If Claimant couldn't do them, they would be done by whatever employee happened to be around and had some time. Claimant was a good reliable worker and Employer could trust her.

On one occasion Employer did have to move an employee to the control room to do some of those odds and ends (and had to backfill that employee's position). They also got a phone machine to answer the phones. Other injured employees would also do some of these errands. The contract guards did not do any extra duties. The additional duties did not constitute enough work to justify a job.

There was no daytime employee guard from the time the incumbent retired in July until Claimant moved from evenings to days in October.

She doesn't know if the guard job was advertised. She doesn't know how claimant's pay was calculated or how much her predecessor was paid. She did get time and a half for overtime. Injured employees just sitting in temporarily would simply continue to get their standard pay. She can't say what the guard pay would have been at the time of the injury.

As a clerk Claimant would have made at least $9.80/hour. Claimant was not offered any other job after 30 Apr 03.

Floyd Sutton testified that:

> From 1977-99, he was the superintendent at the elevator where Claimant worked. In 1995 he coordinated activities and supervised foremen. He was familiar with Claimant, first as a worker/laborer, and then as a gate guard.
>
> The original gate guard, "Sam" worked from 7 AM to 3 PM. He retired in 1996. Claimant was a good choice to replace Sam because she was familiar with the business and could readily do many of the additional jobs, such as truck tickets. He doesn't know if there was a night shift guard before Claimant, but he thinks they hired someone to backfill the position. He did ask to hire an evening gate guard. Any hire of an evening gate guard would have been at the minimum wage.
>
> $8.34/hour was a fair pay for the job because it included more than just guarding. The policy was that any non-union employee would be paid at not less than the lowest union pay scale, which was $13.00 or $14.00/hour.
>
> Claimant would spend time in the office and do filing, time cards, organize and distribute schedules, call employees about schedule changes, work on truck weight and pay tickets, and work on the rain sheet. The rain sheet is important because it determines excused delays and, eventually, profits. She did come in and ask for a raise since she was doing more than Sam did. Those additional jobs might have been enough to justify a separate job.

Nancy Favaloro was Employer's vocational expert and testified by deposition:

> She reviewed wages for security guards in the 1995 time frame and the job done by Claimant. There was a wide range of wages offered depending on the employer and type of business. Industrial wages were higher than non-industrial setting wages. She believes the $8.35 paid to Claimant was a reasonable wage for the duties she was performing for Employer, which included things beyond those normally expected of a security guard. The work performed by Claimant represented an ability to be gainfully employed in the job market. She also stated that there are currently jobs available in the local area commensurate with her training, experience and physical restrictions.

Patty Knight was Claimant's vocational expert and also testified by deposition.

> She opined that the average wage in most regional wage for an industrial gate guard in 1995 would've been between $4.50 and $5.50. She did not include in her determination the clerical aspect of the job.

DISCUSSION

In this case, it is undisputed that Claimant was ultimately unable to return to and remain in her original job as a laborer. Consequently, she is entitled to permanent total disability unless the employer is able to establish the availability of suitable alternative employment. Employer argues that the guard job accepted and held by Claimant for almost eight years was legitimate suitable alternative employment.

The evidence clearly shows that the night shift guard position was sheltered employment. Employer apparently saw no need for such a position either before or after the approximately 30 day period during which the Claimant filled it. Moreover, there were very few clerical tasks involved that would have justified paying a Claimant a salary at the very top end of the wage scale for security guards. Therefore, for the period during which Claimant worked the evening guard shift, Employer has not established suitable alternative employment and Claimant is entitled to total disability for the four week period starting 28 Oct 96.

Conversely, in filling the day guard job, Claimant was replacing another employee who was retiring. Had she not accepted the job, Employer would have filled the position with another employee. In that position she did jobs that in her absence and after her termination were assigned to other employees. The position involved a wide variety of administrative and logistical errands that someone had to do. Those chores included a number of items which involved financial transactions. In short it was a meaningful job, the performance of which benefited the employer. Claimant even sought a raise for all the extra duties she was performing. That meaningful, non-sheltered employment continued even after Claimant's return from surgery in October of 2002. Notwithstanding the changes in her duties at that time, she continued to perform meaningful work for Employer. The record shows that for almost eight years after her injury and eighteen months after reaching her second, post surgery MMI, Claimant had suitable alternative employment. Consequently, Employer has carried its burden and Claimant is not entitled to total disability.[20]

Claimant is partially disabled however. She is therefore entitled to any difference between her average weekly wage (AWW) and her post injury wage earning capacity. That wage-earning capacity shall be determined by her actual earnings, unless she is able to carry the burden of persuasion that her actual earnings do not fairly and reasonably represent her wage-earning capacity.

Both Claimant and Employer offered vocational expert evidence by deposition. A primary issue they addressed was whether or not the $8.34/hour paid Claimant guard in 1995 was a reasonable wage for a security guard. Both experts looked at wages paid to other security guards at the time. Claimant's expert opined that the wages for a security guard ranged from

[20] Claimant's final discharge by Employer was a consequence not of her injuries, but of business and regulatory constraints. It occurred after almost eight years of non-sheltered employment. At that point, Employer is not in a position distinguishable from any other potential employer with whom Claimant may have found suitable alternative post injury employment. *Compare* Devillier v. National Steel & Shipbuilding Co., 10 BRBS 649, 658 (1979); *with* Mendez v. National Steel & Shipbuilding Co., 21 BRBS 22 (1988).

$4.25 to $6.00 per hour, but allowed that range did not account for jobs which might include significant percentage of clerical duties. Similarly, Employer's expert concluded that the wage range for security guards would be from $6.00 to $9.00, but conceded that pay varies widely with experience, and whether the guard work is in an industrial, or retail or hotel/casino setting. She concluded that the $8.34 rate paid Claimant in 1995 was a fair and reasonable wage, particularly given the clerical aspects of the job. On the other hand, Claimant's expert would not say whether it was a fair rate, if the clerical aspects are included as a factor.

The job assigned to Claimant was more than a gate guard job. It involved a significant percentage of clerical work. Consequently, evidence of standard security positions is not particularly relevant in determining if the wage paid Claimant was a fair representation of wages available in the market. The real issue is whether the $8.34 was a reasonable wage for a security guard/clerk/courier. The primary evidence directly on point is Employer's expert who stated that it was. Claimant's expert declined to offer an opinion either way. Perhaps most compelling is the fact that Claimant sought a raise from employer to compensate her for the work she was doing beyond that of a normal gate guard. That tends to indicate that Claimant did not believe her wages were unreasonably high.

The burden of persuasion on this issue falls on Claimant. She has been unable to establish that the $8.34 does not fairly and reasonably represent her wage-earning capacity as a security guard/clerk. Consequently, I find that the measure of her disability is the difference between her average weekly wage (AWW), which has been stipulated to as $696.90 and the $8.34/hour paid to her for non-sheltered employment.[21]

The final issue is whether Employer properly calculated weekly disability payments of $146.70 made to Claimant for the following periods: 10 Nov 96 – 16 Sep 98 (83.3 weeks); 23 Jun 98 – 22 Jul 99 (56.4 weeks); 3 Aug 99 – 19 Dec 99 (19.6 weeks); 17 Jan 00 – 7 Feb 01 (51 weeks); 8 Feb 01 – 30 Sep 01 (34 weeks).

Claimant's weekly wage earning capacity was 40 hours @ $8.34/hour and an additional 10 hours @ 1.5 the hourly wage. That results in a sum of $458.70. The difference between the stipulated AWW of $696.90 and the weekly earning capacity is $238.20. The 2/3 compensation rate of that figure is $158.80, not the $146.70 paid by employer. Consequently, Claimant is entitled to an additional $12.10/week for each period listed.

ORDER AND DECISION

Based upon my review of the entire record and consistent with the foregoing findings of fact, conclusions of law, and analysis, I enter the following decision and order:

Claimant's claim is GRANTED IN PART and DENIED IN PART.

1. Employer shall pay Claimant compensation for temporary total disability from 28 Oct 96 to 24 Nov 96 based on Claimant's average weekly wage of $696.90.

[21] Based on a 50 hour week with 10 hours @ 1.5 overtime, which results in a weekly sum of $458.70.

2. Employer shall pay Claimant compensation for permanent partial disability from 25 Nov 96 to present and continuing based on 2/3 of the differential of an average weekly wage of $696.90 and a post injury weekly earning capacity of $458.70.[22]

3. Employer shall pay all reasonable, appropriate and necessary medical expenses arising from Claimant's 15 Aug 95 work injury, pursuant to the provisions of Section 7 of the Act.

4. Employer shall receive credit for all compensation heretofore paid, as and when paid.

5. Employer shall pay interest on any sums determined to be due and owing at the rate provided by 28 U.S.C. § 1961 (1982). [23]

6. Claimant's attorney shall have thirty days from the date of service of this decision by the District Director to file a fully supported fee application with the Office of Administrative Law Judges; a copy must be served on Claimant and opposing counsel who shall then have twenty days from date of service to file any objections thereto.[24]

So ORDERED.

A

PATRICK M. ROSENOW
Administrative Law Judge

[22] 33 USC §908(c)(21)(2001)

[23] Effective February 27, 2001, this interest rate is based on a weekly average one-year constant maturity Treasury yield for the calendar week preceding the date of service of this Decision and Order by the District Director. This order incorporates by reference this statute and provides for its specific administrative application by the District Director. Grant v. Portland Stevedoring Co., et al., 16 BRBS 267 (1984) .

[24] Counsel for Claimant should be aware that an attorney's fee award approved by an administrative law judge compensates only the hours of work expended between the close of the informal conference proceedings and the issuance of the administrative law judge's Decision and Order. Revoir v. General Dynamics Corp., 12 BRBS 524 (1980). The Board has determined that the letter of referral of the case from the District Director to the Office of the Administrative Law Judges provides the clearest indication of the date when informal proceedings terminate. Miller v. Prolerized New England Co., 14 BRBS 811, 813 (1981), aff.d, 691 F.2d 45 (1st Cir. 1982). Thus, Counsel for Claimant is entitled to a fee award for services rendered after 3 Apr 03, the date this matter was referred from the District Director.